

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ABBOTT GMBH & CO., KG, AND
ABBOTT BIORESEARCH CENTER, INC.

Plaintiffs,

v.

CENTOCOR ORTHO BIOTECH, INC.,

Defendant.

Civil Action No. 4:09-cv-11340-TSH

Jury Trial Demanded

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs Abbott GmbH & Co., KG and Abbott Bioresearch Center, Inc. submit this Notice of Supplemental Authority to apprise the Court of a recent decision by the United States Court of Appeals for the Federal Circuit, *In re Hoffman-La Roche, Inc.*, No. 911, 2009 WL 4281965 (Fed. Cir. Dec. 2, 2009), that is directly relevant to defendant Centocor Ortho Biotech, Inc.'s motion to transfer currently pending before the Court. (Docket Entry 11, filed Sept. 15, 2009). A copy of the *Hoffman-La Roche* decision is attached.

In *Hoffman-La Roche*, the Federal Circuit granted a writ of mandamus, holding that the District Court for the Eastern District of Texas abused its discretion in denying the defendants' motion to transfer to the District of North Carolina pursuant to 28 U.S.C. § 1404(a) when the plaintiff, headquartered in California, had not shown a meaningful connection to the Texas forum. Although the Federal Circuit applied Fifth Circuit law, it weighed many of the same public and private interest factors that are relevant to the motion to transfer in this case. The Court noted that the scientists invented, developed and tested the alleged infringing product in North Carolina. Thus, the bulk of the key documentary evidence, and many of the party and

non-party witnesses, were in North Carolina and subject to the court's subpoena power there. Furthermore, it observed that North Carolina had a local interest in deciding the case. In contrast to the contacts in North Carolina, the Federal Circuit recognized that there was no connection between the case and the Eastern District of Texas.

The facts of *Hoffman-La Roche* are substantially similar to the facts in this case. The scientists that invented Abbott's product are in Massachusetts, the key documentary evidence and many of the party and non-party witnesses are in Massachusetts, and Massachusetts has a local interest in deciding the case. In contrast, the District of Columbia has no connection to the case. Accordingly, *Hoffman-La Roche* further supports the conclusion that Centocor's motion to transfer should be denied.

Respectfully submitted,

December 7, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2009, I electronically filed the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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